

## CCRB INVESTIGATIVE RECOMMENDATION

|  |   |                                     |  |
|--|---|-------------------------------------|--|
| Investigator:<br>Charis Jones                    | Team:<br>Bias Squad #02   | CCRB Case #:<br>202208452           | <input type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S.<br><input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury |
| Incident Date(s)<br>Monday, 12/05/2022 7:20 PM   | Location of Incident:<br>Food Universe Marketplace (located at 96 -09 Liberty Avenue) | 18 Mo. SOL<br>6/5/2024              | Precinct:<br>106   |
| Date/Time CV Reported<br>Sat, 12/10/2022 6:13 AM | CV Reported At:<br>CCRB   | How CV Reported:<br>On-line website | Date/Time Received at CCRB<br>Sat, 12/10/2022 6:13 AM  |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Witness(es) | Home Address |
|-------------|--------------|
|             |              |

| Subject Officer(s)   | Shield | TaxID  | Command     |
|----------------------|--------|--------|-------------|
| 1. SGT John Bonhomme | 03201  | 954559 | INT FIO PRG |
| 2. PO Nicole Criollo | 30839  | 969027 | 106 PCT     |
| 3. PO Carlo Farrugia | 26934  | 965084 | 106 PCT     |

| Witness Officer(s)    | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. PO Brian Tolentino | 27980     | 965567 | 106 PCT  |

| Officer(s)            | Allegation  | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A . SGT John Bonhomme | Abuse: Sergeant John Bonhomme stopped § 87(2)(b)  |                             |
| B . SGT John Bonhomme | Abuse: Sergeant John Bonhomme searched § 87(2)(b)   |                             |
| C . PO Carlo Farrugia | Abuse: Police Officer Carlo Farrugia refused to provide his name to § 87(2)(b)                |                             |
| D . PO Nicole Criollo | Abuse: Police Officer Nicole Criollo refused to provide her name to § 87(2)(b)                |                             |
| E . PO Carlo Farrugia | Abuse: Police Officer Carlo Farrugia refused to provide his shield number to § 87(2)(b)       |                             |
| F . PO Nicole Criollo | Abuse: Police Officer Nicole Criollo refused to provide her shield number to § 87(2)(b)       |                             |
| G . SGT John Bonhomme | Abuse: Sergeant John Bonhomme took law enforcement action based upon actual or perceived race |                             |

## Case Summary

On December 10, 2022, § 87(2)(b) filed this complaint online at the CCRB's website (**Board Review 01**). On December 12, 2022, this case was assigned to Investigator Daniel Talero. On January 5, 2023, this case was reassigned to the undersigned.

On December 5, 2022, at approximately 7:20 p.m., Sergeant John Bonhomme, who was working as the Field Intelligence Officer (FIO) for the 106<sup>th</sup> Precinct, stopped § 87(2)(b) in front of 96-09 Liberty Avenue in Queens (**Allegation A: Abuse of Authority**, § 87(2)(g) Police Officer Brian Tolentino, Police Officer Carlo Farrugia, and Police Officer Nicole Criollo (all assigned to the 106<sup>th</sup> Precinct) were also present. Sgt. Bonhomme ordered PO Tolentino to retrieve § 87(2)(b) identification from his pants pocket (**Allegation B: Abuse of Authority**, § 87(2)(g) PO Farrugia and PO Criollo failed to provide their names and shield numbers to § 87(2)(b) (**Allegations C-F: Abuse of Authority**, § 87(2)(g) Sgt. Bonhomme allegedly took law enforcement based upon the actual or perceived race of § 87(2)(b) (**Allegation G: Abuse of Authority**, § 87(2)(g)

No arrests were made, and no summons were issued during this incident.

The investigations obtained the body-worn-camera (BWC) recording of Sgt. Bonhomme, PO Tolentino, PO Farrugia, and PO Criollo, which captured the entire interaction (**Board Review 02**).

## Findings and Recommendations

### **Allegation (A) Abuse of Authority: Sergeant John Bonhomme stopped § 87(2)(b)**

At the time of this incident, § 87(2)(b) (**Board Review 03**) was a 30-year-old Black transgender man who stood 6'0" tall, weighed 175 pounds, had multi-colored hair and brown eyes. During his interaction with police officers, § 87(2)(b) was wearing black Nike sneakers with a green logo, black pants with reflective stripes on each side and two front pockets and one rear pocket, a black hoodie with a kangaroo pocket in the front, and a multicolored blue-turquoise-neon pink fleece sweater with two front pockets and a chest pocket over the hoodie. The multicolored sweater was zipped up, which covered the black hoodie entirely except for the hood. § 87(2)(b) had an i-Phone 13 and his wife's bank card in his sweater's left pocket.

At approximately 7:20 p.m. on December 5, 2022, § 87(2)(b) was walking from his home to the ATM. § 87(2)(b) walked northbound on Rockaway Boulevard and turned the corner to head eastbound on Liberty Avenue. As § 87(2)(b) crossed Liberty Avenue and approached the "Food Universe Marketplace," located at 96-09 Liberty Avenue, he heard someone yell, "Hey you!" § 87(2)(b) turned around and observed Sgt. Bonhomme, PO Tolentino, PO Farrugia, and PO Criollo approaching. § 87(2)(b) backed up against the exterior wall of the supermarket and faced the street as the officers surrounded him. Sgt. Bonhomme went to grab § 87(2)(b) and § 87(2)(b) pulled his arm away from them and said, "Woah, woah, woah, what is this regarding?" § 87(2)(b) attempted to pull out his phone. PO Tolentino ordered him to take his hands out of his pockets and he complied. One of the officers asked § 87(2)(b) where he was coming from, and § 87(2)(b) replied that he came from home and was going to the ATM. One of the officers said that there had been a robbery in the area and asked § 87(2)(b) why he ran across the street. § 87(2)(b) asked if it was a crime to be Black and run across the street. One of the officers said that the suspect was a 6'0" tall Black male wearing a black hoodie. The officers did not provide any additional information about the robbery or the suspect's description. § 87(2)(b) pointed out that his hoodie was beneath his sweater and that he did not match the description.

On December 5, 2022, at 7:09 p.m., a 911 call was made by a verified caller regarding a robbery in progress, generating event # § 87(2)(b) (**Board Review 04 and 37**). The caller states that the robbery was taking place at the corner of 101<sup>st</sup> Street and Woodhaven Boulevard in Queens, and describes the perpetrators; five 13- or 14-year-old Black males all of whom are wearing masks. The caller describes one of the males as wearing jeans and a blue hoodie with a black jacket over it. This individual appears to be 14 years old. The caller describes a second suspect as a Black male with a green hoodie and a black vest over the hoodie.

Sgt. Bonhomme testified (**Board Review 05, 06**) that he was in his office inside of the 106<sup>th</sup> Precinct stationhouse in Queens when he received radio transmission regarding a robbery in progress in the 102<sup>nd</sup> Precinct in the vicinity of 94<sup>th</sup> Street and Woodhaven Boulevard. Specifically, “five to six male Blacks wearing dark clothing had just committed a robbery of a cellphone or scooter and some of the perpetrators may have been wearing face masks.” Upon hearing the radio communications, Sgt. Bonhomme exited the stationhouse and approached his vehicle. Det. Giganti (vehicle operator), PO Criollo, PO Farrugia, and PO Tolentino joined Sgt. Bonhomme and got into the vehicle as well. As Sgt. Bonhomme got into the front passenger seat of the vehicle, the Patrol Sergeant, identified as “Sgt. Barry,” went over the radio and said that she saw the males around Woodhaven Boulevard and Liberty Avenue, and that they were running on Liberty Avenue. Sgt. Bonhomme confirmed that at that point the description of the suspects and the location had not changed. Sgt. Bonhomme stated that Sgt. Barry was located at Woodhaven Boulevard and “Rockaway,” which was approximately two to three blocks from the 106<sup>th</sup> Precinct stationhouse. Sgt. Bonhomme and the other officers were driving eastbound on Liberty Avenue after Sgt. Barry had indicated that the suspects were running westbound on Liberty Avenue. Within seconds of receiving that information from Sgt. Barry, Sgt. Bonhomme observed § 87(2)(b) run across the street in front of their vehicle. Sgt. Bonhomme decided to stop § 87(2)(b) because of the “totality of the circumstances,” which included the robbery itself, the multiple 911 calls made regarding the robbery, that § 87(2)(b) “fit the description,” and the fact that § 87(2)(b) was running westbound on Liberty Street. Sgt. Bonhomme jumped out of his police vehicle and quickly approached § 87(2)(b) who now stood in front of the Food Universe Marketplace. § 87(2)(b) was a Black male who stood 6’ tall, weighed 180 pounds, was wearing a dark hoodie beneath a red and blue multicolored jacket and black pants. Sgt. Bonhomme approximated § 87(2)(b) to be in his early 20s. It was Sgt. Bonhomme’s opinion that § 87(2)(b) matched the description of the suspects. Sgt. Bonhomme stated that it was common for perpetrators to “peel off from a group,” discard clothing, and change appearances after the commission of a crime.

During the interview, Sgt. Bonhomme was shown the event materials related to this incident located in IA # 57 of the digital case file (**Board Review 04 and 37**). Sgt. Bonhomme’s attention was directed to the portion of the event that listed the descriptions of one of the perpetrators of the robbery; “Age: 15, Sex: Male, Race: Black, wearing black jacket, blue hoodie, blue jeans.” After reviewing the materials, Sgt. Bonhomme confirmed that the description listed was consistent with the information he received via the radio on the night of the incident. Sgt. Bonhomme stated that § 87(2)(b) was wearing a black hoodie beneath the multicolored jacket that was zipped all the way up, and black pants. Sgt. Bonhomme reiterated that § 87(2)(b) could have easily thrown on a different colored jacket after committing the crime. Sgt. Bonhomme was shown another portion of the event material, which listed another description of one of the perpetrators; “Age: 15, Sex: Male, Race: Black, wearing green hoodie and black vest.” After reviewing this section, Sgt. Bonhomme maintained that there were multiple males involved in the robbery and that § 87(2)(b) matched the description of the male wearing black jacket, blue hoodie, and blue jeans.

PO Tolentino, PO Farrugia, and PO Criollo all testified that Sgt. Bonhomme made the initial

observation of § 87(2)(b) and made the decision to stop him (**Board Reviews 07-09**).

Sgt. Bonhomme's BWC footage, which is 14:00 minutes in length, captures his initial stop of § 87(2)(b) as well as § 87(2)(b) physical appearance (**Board Review 02**, file ending in "BONHOMME.mp4"). At 00:56, the police vehicle stops, and Sgt. Bonhomme exits and runs towards the sidewalk. At 01:01, Sgt. Bonhomme approaches § 87(2)(b) stops him, and says, "Hey you, you have ID on you?" § 87(2)(b) is wearing a pink, purple and blue patterned fleece zipped all the way up with a black hooded sweatshirt beneath it with only the hood visible, a backwards baseball cap, and black sweatpants with white reflective stripes down the sides. § 87(2)(b) responds, "Woah, woah, woah, woah." Sgt. Bonhomme says, "There was just a robbery and you fit the description."

*People v. De Bour*, 40 N.Y. 2d 210 (1976) determined that a forcible stop and detention must be founded upon reasonable suspicion that the particular person has committed, is committing, or is about to commit a crime. Innocuous behavior will not generate a founded or reasonable suspicion that a crime is at hand. An officer may frisk an individual only if the officer reasonably suspects that the individual is armed (**Board Review 10**).

Sgt. Bonhomme received a detailed description of two of the perpetrators over the radio and stated that he stopped § 87(2)(b) because he matched one of the descriptions. The description Sgt. Bonhomme referred to as matching § 87(2)(b) stated that the perpetrator was 13 or 14 years old and was wearing a black jacket, blue hoodie, and blue jeans. The BWC footage shows that § 87(2)(b) did not match the description Sgt. Bonhomme referred to. As discussed above, § 87(2)(b) was 30 years old at the time of the incident and was wearing a brightly colored patterned fleece and black sweatpants. Sgt. Bonhomme also stated that he was suspicious of § 87(2)(b) because he observed him run across the street and he was in the vicinity of the robbery. However, running across the street is not innately criminal, and such behavior could readily be attributed to other innocuous reasons. § 87(2)(g)

§ 87(2)(g)

#### **Allegation (B) Abuse of Authority: Sergeant John Bonhomme searched § 87(2)(b)**

Allegation B was captured on BWC and not alleged by § 87(2)(b)

PO Tolentino testified (**Board Review 07**) that once § 87(2)(b) was stopped, Sgt. Bonhomme requested his identification. § 87(2)(b) told Sgt. Bonhomme that he did not have his identification on his person and so he provided his name verbally. Sgt. Bonhomme instructed PO Tolentino to retrieve § 87(2)(b) identification. PO Tolentino observed what he thought was § 87(2)(b) wallet in his left jacket pocket, so he entered § 87(2)(b) pocket to retrieve it. PO Tolentino did not observe any bulges or concealed items on § 87(2)(b) person. PO Tolentino removed § 87(2)(b) keys from this pocket and then put them back into the same pocket. PO Tolentino did not frisk § 87(2)(b)

Sgt. Bonhomme testified (**Board Reviews 05, 06**) that he instructed PO Tolentino to go into § 87(2)(b) pocket to physically retrieve § 87(2)(b) identification because he was a potential suspect in a robbery that had just been committed. PO Tolentino went into § 87(2)(b) pocket to retrieve his identification.

Although PO Tolentino physically entered § 87(2)(b) jacket pocket, he only did so under the direct instruction of Sgt. Bonhomme. Given that PO Tolentino was Sgt. Bonhomme's subordinate, and that Sgt. Bonhomme ordered PO Tolentino to retrieve § 87(2)(b) identification, the investigation pled the search allegation against Sgt. Bonhomme.

PO Tolentino's BWC recording, which is 14:49 minutes in length, captures this portion of the incident (**Board Review 02**, label ending in "TOLENTINO.mp4"). At 00:57, the police vehicle stops, and PO Tolentino exits and runs behind Sgt. Bonhomme who approaches § 87(2)(b) on the sidewalk. Sgt. Bonhomme immediately asks for his identification. § 87(2)(b) responds that he does not have his identification. At 01:13, Sgt. Bonhomme looks at PO Tolentino and orders him to retrieve § 87(2)(b) identification. PO Tolentino holds onto § 87(2)(b) left forearm and goes into § 87(2)(b) sweater pocket and left pants pocket.

NYPD Patrol Guide Procedure 212-11 specifies that during a Level 3 *Terry* stop, an officer may only search inside the pockets of the stopped individual to retrieve an item which they felt during a frisk of the individual and which they reasonably suspect is a weapon. (**Board Review 12**). However, as discussed above, neither Sgt. Bonhomme nor PO Tolentino frisked § 87(2)(b) sweater pocket prior to PO Tolentino searching it, and the search was not conducted to retrieve an item that the officers suspected was a weapon but to retrieve § 87(2)(b) identification. Thus, the search violated PG 212-11.

Beyond the circumstances specified in Patrol Guide Procedure 212-11, an officer's warrantless search of an individual pedestrian's clothing during an investigative street encounter is only legally permissible when supported by probable cause that the individual has committed, is committing, or is about to commit a crime and/or possesses contraband or other evidence of a crime *People v. McNatt*, 65 N.Y.2d 1046, 1048 (1985 )(**Board Review 34**). § 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Carlo Farrugia refused to provide his name to § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Nicole Criollo refused to provide her name to § 87(2)(b)**

**Allegation (E) Abuse of Authority: Police Officer Carlo Farrugia refused to provide his shield number to § 87(2)(b)**

**Allegation (F) Abuse of Authority: Police Officer Nicole Criollo refused to provide her shield number to § 87(2)(b)**



§ 87(2)(b) testified (**Board Review 03**) that during the incident he said to the officers on scene, "I need all y'all's name and shield numbers." Sgt. Bonhomme and PO Tolentino gave § 87(2)(b) business cards and told him their names. PO Criollo told § 87(2)(b) to take a picture of her shield. § 87(2)(b) took a photograph of PO Criollo's name plate and shield number as well as PO Farrugia's.

PO Farrugia and PO Criollo both testified (**Board Reviews 08, 09**) that § 87(2)(b) requested their name and shield numbers. Both officers stated that they did not provide their name and shield numbers to him verbally because § 87(2)(b) took photographs of their name plates and shield numbers.

PO Criollo's BWC footage, which is 14:10 minutes in length, captures this portion of the incident (**Board Review 02**, file ending in "CRIOLLO.mp4). At 02:11, § 87(2)(b) says, "I need all y'all badge numbers and names, all that shit." PO Tolentino turns towards him and points to his shield. § 87(2)(b) says, "I need to write it down. I don't have anything because we're outside." The officer's response is inaudible. At 02:18, § 87(2)(b) removes his cellphone from his front pants pocket and says, "This is fucking crazy." At 02:35, PO Tolentino provides § 87(2)(b) with a business card. § 87(2)(b) says, "Thank you." At 02:41, § 87(2)(b) says to PO Farrugia, "You got a card?" His response is inaudible. § 87(2)(b) removes his cellphone and takes a photograph of PO Tolentino. § 87(2)(b) then takes a photograph of PO Criollo.

The investigation did not plead failure to provide RTKA business cards allegations against PO Farrugia and PO Criollo because they did not take any law enforcement action on scene. Both Sgt. Bonhomme and PO Tolentino provided their business cards to § 87(2)(b).

NYPD Patrol Guide Procedure 203-09 states that officers are required to courteously and clearly state their name, shield number, and command, or otherwise provide them, to anyone who requests them to do so. The same procedure also states that officers are required to offer a business card for law enforcement activity, except in cases when a summons is issued or an arrest is made, as follows (**Board Review 14**):

- a. Noncustodial questioning of individuals suspected of criminal activity (Level 2 Encounter);
- b. Stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime where a reasonable person would not feel free to end the encounter (Level 3 encounter);
- c. Frisk (Level 3 Encounter);
- d. Search of persons or property, including vehicles;
- e. Roadblocks or checkpoints, including checkpoints related to enforcement of article 31 of the Vehicle and Traffic Law (Alcohol and Drug-Related Offenses), but not including planned security checks of vehicles at sensitive locations or street closures for public events or emergencies;
- f. Home search;
- g. Assigned Detective Only First in-person questioning of victims and/or witnesses to a crime.

§ 87(2)(b) testified that he asked the officers on scene for their name and shield numbers. The BWC footage corroborates his testimony and shows that PO Farrugia and PO Criollo did not provide their information to him when he requested it. Although both officers stated that they did not verbalize their information to § 87(2)(b) because § 87(2)(b) appeared to be taking

photographs of their name plates and shield numbers, the Patrol Guide requires an officer to state their name and shield number clearly when asked, which both PO Farrugia and PO Criollo failed to do. § 87(2)(g)

**Allegation (G) Abuse of Authority: Sergeant John Bonhomme took law enforcement action based upon actual or perceived race.**

§ 87(2)(b) stated that he felt he was racially profiled because he is a Black man (**Board Review 03**).

The investigation pleaded the racial bias allegation solely against Sgt. Bonhomme because he was the officer who initially observed § 87(2)(b) and decided to initiate the stop and to search § 87(2)(b).

Sgt. Bonhomme testified that he stopped § 87(2)(b) because § 87(2)(b) “fit the description” of the robbery suspect and because he observed him running from the direction of where the robbery occurred (**Board Reviews 05, 06**).

As noted above, a 911 call was made by a verified caller regarding a robbery in progress, generating event # § 87(2)(b) (**Board Review 04 and 37**). The caller states that the robbery was taking place at the corner of 101 Street and Woodhaven Boulevard in Queens and describes the perpetrators; five 13- or 14-year-old Black males all of whom are wearing masks. The caller describes one of the males as wearing jeans and a blue hoodie with a black jacket over it. This individual appears to be 14 years old. The caller describes a second suspect as a Black male with a green hoodie and a black vest over the hoodie.

Sgt. Bonhomme’s BWC footage, which is 14:00 minutes in length, captures his initial stop of § 87(2)(b) as well as § 87(2)(b) physical appearance (**Board Review 02**, file labeled “BONHOMME.mp4”). At 00:56, the vehicle stops, and Sgt. Bonhomme exits and begins to run towards the sidewalk. At 01:01, Sgt. Bonhomme approaches § 87(2)(b) stops him, and says, “Hey you, you have ID on you?” § 87(2)(b) is wearing a pink, purple and blue patterned fleece zipped all the way up with a black hooded sweatshirt beneath it, a backwards baseball cap, and sweatpants with white reflective stripes down the sides. § 87(2)(b) appears to be a Black male who stands approximately 6’0” tall and appears to be in his early 30’s. § 87(2)(b) responds, “Woah, woah, woah, woah.” Sgt. Bonhomme says, “There was just a robbery and you fit the description.”

§ 87(2)(b) § 87(2)(b) identified himself as a “Native” 28-year-old Transgender Male who stood 6’0” tall, weighed 180 pounds, had multi-colored hair and brown eyes (**Board Review 15**).

Under NYPD Administrative Guide Procedure 304-17: Department Policy Prohibiting Racial Profiling and Biased-Based Policing, NYPD members of service are prohibited from initiating a law enforcement action that is “motivated even in part by a person’s actual or perceived race, color, ethnicity, or national origin. . . Race, color, ethnicity, or national origin may only be considered when the stop is based on a specific and reliable suspect description that includes not just race, gender and age, but other identifying characteristics or information. When an officer carries out a stop based on reasonable suspicion that a person fits such a description, the officer may consider the race, color, ethnicity, or national origin of the suspect, just as the officer may consider the suspect’s

height or hair color. . . [W]hen a stop is not based on specific suspect description, however, race, ethnicity, or national origin may not be used at all as a motivation or justification for the stop” (Board Review 16).

Race does not have to be the sole, primary, or even predominant factor for the law enforcement action in question to sustain an allegation of racially-biased policing. *United States v. City of Yonkers*, 96 F.3d 600, 611-12 (2d Cir. 1996) (Board Review 17); *Floyd v. City of New York*, 959 F. Supp. 2d 549, 571 (S.D.N.Y. 2013) (Board Review 18). If the preponderance of the evidence establishes that the officer’s actions were at least partially motivated by the civilian’s race, the racially-biased policing allegation should be substantiated, regardless of any nondiscriminatory reasons of the officer may have also given for their actions. *Yonkers*, 96 F.3d at 612; *Raza v. City of New York*, 990 F. Supp. 2d 70, 79-80 (E.D.N.Y. 2013) (Board Review 19).

Racial motivation can be established through direct or circumstantial evidence. *Hayden v. Patterson*, 594 F. 3d 150, 163 (2d Cir. 2010); *Bennett v. Health Mgmt. Sys., Inc.*, 92 A.D. 3d 29, 40-41 (1st Dep’t 2011); *Louis v. Metro. Transit. Auth.*, 145 F. Supp. 3d 215, 226 (E.D.N.Y. 2015) (Board Review 23). Direct evidence of discriminatory motive includes evidence that “a decision relies expressly on [the civilian’s] protected characteristic,” as well as conduct or statements “directly reflecting [the officer’s] discriminatory attitude” toward members of the civilian’s demographic group. See *Young v. UPS*, 575 U.S. 206, 213 (2015); *Lightfoot v. Union Carbide Corp.*, 110 F. 3d 898, 913 (2d Cir. 1997) (Board Review 24). Here, although there was no evidence in the record of Sgt. Bonhomme using slurs or making derogatory remarks about § 87(2)(b) race, Sgt. Bonhomme acknowledged both during his stop of § 87(2)(b) and during his CCRB interview that his decision to stop § 87(2)(b) was based in part on the fact that § 87(2)(b) was a Black male and, at the time of the stop, Sgt Bonhomme was looking for a Black male suspect in a recently reported robbery (Board Reviews 05, 06). The question is whether this use of civilian race as a basis for taking law enforcement action was permissible under NYPD Administrative Guide Procedure 304-17.

As discussed above, A.G. 304-17 specifies that “when an officer carries out a stop based on reasonable suspicion that a person fits . . . a specific and reliable suspect description that includes not just race, gender and age, but other identifying characteristics or information, . . . the officer may consider the race, color, ethnicity, or national origin of the suspect, just as the officer may consider the suspect’s height or hair color.” A.G. 304-17 also specifies that “when a stop is not based on a specific suspect description, however, race, ethnicity, or national origin may not be used at all as a motivation or justification for the stop.” (Board Review 16). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

It makes no difference that Sgt. Bonhomme also offered race-neutral reasons for the stop (e.g., that § 87(2)(b) was running across the street in the geographic vicinity of the recently reported robbery) because, as discussed above, law enforcement actions that are motivated even in part by the civilian’s race are prohibited under A.G. 304-17 (Board Review 16).



Moreover, even if Sgt. Bonhomme's admitted consideration of § 87(2)(b) race was not enough on its own to establish that his stop of § 87(2)(b) was racially motivated, there is additional circumstantial evidence of his racial motivation in the record. First, the fact that a law enforcement action was taken in violation of the law and/or police department policy can, in combination with other evidence, also support a finding that such action was racially motivated. *Rodriguez v. Barr*, 943 F.3d at 142-43; *Hassan v. City of N.Y.*, 804 F.3d 277, 296 n.7 (3d Cir. 2015) (**Board Review 27**); *Commonwealth v. Long*, 152 N.E.3d at 740 n.12 (**Board Review 26**). § 87(2)(g)

§ 87(2)(b) NYPD Patrol Guide Proc. 212-11. "[T]he lack of adequate suspicion" in combination with other circumstantial evidence, can support "a reasonable inference that [the police officer] acted, at least in part" because of the civilian's race. *Anderson v. Cornejo*, 284 F.Supp.2d 1008, 1055 (N.D. Ill. 2003) (**Board Review 35**); see also *Marshall v. Columbia Lea Reg'l Hosp.*, 345 F.3d 1157, 1169 (10th Cir. 2003) ("[T]he lack of probable cause for the stop. . . would be evidence that the officer's initial decision to pull [the driver] over was pretextual.") (**Board Review 28**).

Second, the implausibility of a law enforcement official's non-discriminatory explanation for their actions can itself support an inference that such explanation is pretext for racial discrimination. *Miller-El v. Dretke*, 545 U.S. 231, 245-46 (2005) (**Board Review 36**). Here, Sgt. Bonhomme's explanation for suspecting § 87(2)(b) of robbery even though his clothing did not match what the robbery suspects were reportedly wearing—that § 87(2)(b) could have "peel[ed] off" from the group of suspects, discarded his clothing, and changed appearances after committing the robbery (**Board Reviews 05, 06**)—is implausible and, if credited, would have given Sgt. Bonhomme the ability to stop every young Black male he encountered on the street that evening.

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 20**).
- Sgt. Bonhomme has been a member of service for 10 years and has been a subject in six CCRB complaints and 14 allegations, none of which were substantiated. § 87(2)(g)
- PO Tolentino has been a member of service for six years and has been a subject in one CCRB complaint in three allegations, none of which were substantiated. § 87(2)(g)
- PO Farrugia has been a member of service for six years and has been a subject in two CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)
- PO Criollo has been a member of service for four years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of February 21, 2024, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (**Board Review 21**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

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Squad No.:     RPBP Bias  
                    Squad 2

|               |                     |                          |                   |
|---------------|---------------------|--------------------------|-------------------|
| Investigator: | <u>Charis Jones</u> | <u>Inv. Charis Jones</u> | <u>02/22/2024</u> |
|               | Signature           | Print Title & Name       | Date              |

|               |                        |                           |                   |
|---------------|------------------------|---------------------------|-------------------|
| Squad Leader: | <u>Tessa Yesselman</u> | <u>IM Tessa Yesselman</u> | <u>02/28/2024</u> |
|               | Signature              | Print Title & Name        | Date              |

|           |                              |                                    |                   |
|-----------|------------------------------|------------------------------------|-------------------|
|           |                              | Dep. Dir. RPBP                     |                   |
| Reviewer: | <u>Bianca Victoria Scott</u> | <u>Bianca Victoria Scott, Esq.</u> | <u>03/11/2024</u> |
|           | Signature                    | Print Title & Name                 | Date              |